

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 131 - SB 447

February 12, 2013

SUMMARY OF BILL: Replaces definition of “commercial sex act” with definition of “sexual servitude” under Tenn. Code Ann. § 39-13-301.

Repeals Class A felony for trafficking for commercial sex acts of a child under 15 years of age and replaces with a sentence enhancement for trafficking for commercial sex acts of a minor, not just a minor under the age of 15, requiring the offender to be sentenced within Range II or higher.

Enhances an offense of trafficking for commercial sex acts from a Class B felony to a Class A felony when the offender is a “criminal gang member” or when the offense constitutes a “criminal gang offense” under Tenn. Code. Ann. § 40-35-121.

Prohibits an offender from arguing that the subject of trafficking for commercial sex acts was a law enforcement officer or that the minor victim consented to the offense.

Adds “patronizing prostitution of a minor” to the definition of “sexual offense” under Tenn. Code Ann. § 40-39-202, offenses for which an offender must register with the sex offender registry under Tenn. Code Ann. § 40-39-212.

Enhances patronizing prostitution of a minor from a Class E felony to a Class A felony and prohibits offender from arguing that subject to the patronizing prostitution was a law enforcement officer or that the minor victim consented to the offense.

Changes the hotline a minor arrested for prostitution should call from the “national human trafficking resource center hotline” to the “Tennessee Human Trafficking Resource Center hotline.”

Expands the defense under Tenn. Code Ann. § 39-13-513 for prostitution to include those “suspected or charged” rather than those “charged.”

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures – \$7,500/One Time/TBI
\$137,300/Incarceration***

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Assumptions:

Assumptions Relative to Criminal Defenses:

- Currently, consent is not a defense to trafficking for commercial sex acts or patronizing prostitution. Expressly prohibiting the defense by statute will not impact the number of admissions into state correctional facilities.
- Currently, it is not a defense to trafficking for commercial sex acts or patronizing prostitution that the subject of the offense is a law enforcement officer. Expressly prohibiting the defense by statute will not impact the number of admissions into state correctional facilities.
- Expanding the defense against prosecution for prostitution to include those suspected or charged of prostitution, rather than just those charged with committing prostitution, will not impact the number of admissions into state correctional facilities.

Assumption Relative to Human Trafficking Resources:

- Changing which hotline law enforcement officers are required to provide to a minor victim of prostitution will not have a significant fiscal impact on the state or on local governments.

Assumption Relative to Sex Offender Registry:

- According to the Department of Correction (DOC), adding “patronizing prostitution” to the definition of “sexual offense” under Tenn. Code Ann. § 40-39-202, for which offenders must register with the sex offender registry, will not have an impact on the state.
- According to the Tennessee Bureau of Investigation, there would be a one-time cost of \$7,500 for computer programming to have patronizing prostitution added to the sex offender registry.

Assumptions Relative to Trafficking for Commercial Sex Acts:

- The Class A felony for trafficking for commercial sex acts of a child under 15 years of age was codified by 2012 Pub. Ch. 1075. The fiscal note for that public chapter estimated one admission every three years, which would result in estimated incarceration costs of \$73,000 per year. According to statistics from the DOC, there has not been an admission for trafficking for commercial sex acts of a child under 15 years of age. The state has yet to incur any financial liability for this offense.
- The bill creates an enhanced offense for trafficking for commercial sex acts of a minor, which shall be sentenced within Range II or higher if the offender qualifies for a higher range. It is assumed that there will be one admission every 10 years for a Class B, Range II offender. A Class B, Range II offender can receive a sentence of 12–20 years. It is assumed that the average sentence for trafficking for commercial sex acts of a minor will be 16 years. The release eligibility for Range II offenders is 35 percent, but it is assumed that the average time served will be 40 percent, or 6.4 years for a 16 year sentence.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2013 is \$64.17.

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every 10 years serving 6.4 years (2,337.6 days) for an annualized total of \$15,000 $[(\$64.17 \times 2,337.6 \text{ days}) / 10]$.
- Repealing the Class A felony will result in a reduction of expenditures of \$73,000, which will be offset by the \$15,000 increase in expenditures from the Range II sentencing enhancement. The bill will result in a net reduction of expenditures in the amount of \$58,000 $(\$73,000 - \$15,000)$.
- The bill creates a Class A felony for trafficking for commercial sex acts committed by a “criminal gang member” or trafficking for commercial sex acts that constitute a “criminal gang offense” as those terms are defined in Tenn. Code Ann. § 40-35-121.
- According to the DOC, it is assumed that there will be one Class A felony conviction every ten years for trafficking for commercial sex acts by a criminal gang member that would currently be a Class B felony. The bill will result in each offender serving an additional 10.49 years (15.78 years, the average time served for a Class A felony – 5.29 years, the average time served for a Class B felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every 10 years serving an additional 10.49 years (3,831.47 days) for an annualized total of \$24,587 $[(\$64.17 \times 3,831.47 \text{ days}) / 10]$.

Assumptions Relative to Patronizing Prostitution:

- The bill enhances patronizing prostitution of a minor from a Class E felony to a Class A felony.
- According to the DOC, there have been no admissions for patronizing prostitution of a minor or intellectually disabled individual. The DOC assumes there will be one Class A felony admission every two years for patronizing prostitution of a minor or intellectually disabled individual that is currently a Class E felony.
- The bill will result in each offender serving an additional 14.57 years (15.78 years, the average time served for a Class A felony – 1.21 years, the average time served for a Class E felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every two years serving an additional 14.57 years (5,321.69 days) for an annualized total of \$170,746 $[(\$64.17 \times 5,321.69 \text{ days}) / 2]$.

Assumption Relative to the Cumulative Impact:

- The total incarceration cost is \$137,333 $(\$24,587 + \$170,746 - \$58,000)$.

Assumptions Relative to District Attorneys, Public Defenders, and the Courts:

- Any impact to the District Attorneys General Conference and District Public Defenders Conference can be accommodated within existing resources.
- Any impact to the caseloads of state trial courts can be accommodated within existing judicial resources without an increased appropriation or reduced reversion.

*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/trm